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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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LM02/0922

EXAMINER

ZHEN, W

ART UNIT

PAPER NUMBER

2762

DATE MAILED:

09/22/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
08/997,142

Applicant(s)
Marshall A. Isman

Examiner
Wei Zhen

Group Art Unit
2762



☒ Responsive to communication(s) filed on Jul 31, 2000

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1035 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claim

- ☒ Claim(s) 1-12 is/are pending in the application.
Of the above, claim(s) _____ is/are withdrawn from consideration.
- ☒ Claim(s) 3-12 is/are allowed.
- ☒ Claim(s) 1 and 2 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claims _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☒ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) _____.
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

- ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☐ Notice of References Cited, PTO-892
- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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DETAILED ACTION

Response to Amendment

1. This action is in response to the amendment filed on 7/31/2000.
2. The rejections to claims 1-12 under 35 U.S.C. 101 are hereby withdrawn in view of applicant's arguments.
3. Claims 1-2 remains rejected under 35 U.S.C. 103 (a).
4. Claims 3-12 are allowed.

Response to Arguments

5. Applicant's arguments with respect to claims 1-2 have been considered but they are not persuasive.

In the remarks, the applicant argues in substance that

- I) Benner has no teachings about applications expressed as a graph of vertices, or of vertices and links.
- II) Benner teaches nothing about analyzing the capacity of such an application executing on a parallel processing system.
- III) Benner teach nothing about creating a performance description of each vertex in the graph and determining an execution time for each vertex in the graph.
- IV) Tsuchida not only has no teaching about applications expressed as a graph of vertices, or of vertices and links, Tshchida has no teaching about any method or system for analyzing the capacity of such an application executing on a parallel system.

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- I) In response to applicant's arguments, the recitation “applications expressed as a graph of vertices, or of vertices and links” has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). In addition, the examiner interpreted the claim expressed the parallel processing system as a graph of vertices.
- II) In response to applicant's arguments, the recitation “analyzing the capacity of such an application executing on a parallel processing system.” has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).
- III) The examiner interpreted the vertices are the processors in the parallel processing system, therefore, Fig. 3 does shows the performance description of each vertex in the graph and execution time for each vertex in the graph.

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IV) In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Allowable Subject Matter

6. Claim 3-12 are allowed.

See the previous office action for reasons to allow these claims.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Wei Zhen whose telephone number is (703)305-0437.


The examiner can normally be reached on Monday-Friday from 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor Tariq Hafiz can be reached at (703) 305-9643. The fax number for this group is ((703)308-5397.

Any inquiry of general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is (703)305-9600.

Wei Zhen

9/20/2000



Tariq R. Hafiz
Supervisory Patent Examiner
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